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SUBJECT: ITALY'S CONSTITUTIONAL COURT ANNULS IMMUNITY FOR PM BERLUSCONI

REF: A. ROME 2799

[B. ROME 2949](#)

[C. ROME 2284](#)

¶1. (U) Summary. Following a Constitutional Court decision on January 13 PM Berlusconi is no longer protected from prosecution in a Milan-based corruption trial while serving as Prime Minister--a safeguard he was afforded by a June 2003 law. The Court found that the measure protecting the five most important institutional figures from criminal prosecution during their terms in office conflicted with the constitutional principle of equality before the law. Prosecutors will re-open the trial against Berlusconi but at the moment they will not be able to pick up where they left off when proceedings were suspended last June. The government, whose priority was to protect Berlusconi during Italy's EU presidency, will now move to pass a more complicated constitutional law mirroring the annulled Schifani bill and adding as a sweetener to the center-left opposition the reinstatement of full immunity for sitting parliamentarians. End Summary.

¶2. (U) Italy's Constitutional Court today (January 13) ruled unconstitutional a June 20, 2003 law which protected the five most important institutional figures from trial during their terms in office (ref A). The center-right governing coalition had pushed the immunity law (known in Italy as the Lodo Schifani) through the Parliament to freeze proceedings in a Milan-based corruption trial that featured PM Berlusconi as the key defendant. The Court determined the measure violated the constitutional principle of equality before the law. It also asserted that, because the Constitution does not provide for immunity from crimes not connected with an official's duties, an ordinary law could not establish such protection. Press reports suggest that the sentence should render moot a referendum to abrogate the Schifani Law promoted by part of the opposition and now awaiting final approval by the Supreme Court.

¶3. (U) Reaction to the verdict was generally low-key. Center-left leaders crowed that they had said all along the effort to implement such a radical change with ordinary legislation conflicted with constitutional norms. Nevertheless, the Senate leader of the largest opposition party (Democratici di Sinistra/Left Democrats) left the door open to a future constitutional bill that would strengthen immunity for all parliamentarians and, potentially, the same five office holders covered by the Lodo Schifani. (Note: Such immunity is the norm in most other EU states. End Note) The House leader of the important opposition Daisy party echoed this approach. Government representatives, clinging to the high road, claimed they had acted in good faith to safeguard Italy's institutions, believing the center-right's approach was constitutional.

¶4. (SBU) Comment: How the decision will shake out for Berlusconi is not entirely clear. Certainly, the Milan prosecutors who brought the issue of the immunity law's constitutionality before the High Court (ref B) will re-open their case against him. However, for technical reasons, Italian analysts say they probably will not be able to pick up exactly where they left off when proceedings against Berlusconi in the so-called SME case (ref C) were suspended last June, which is likely to prolong a trial that has already been in court for three years. There are also questions surrounding what form the trial will take as a result of the sentencing of former Berlusconi lawyer Cesare Previti to five years in prison in the same proceedings subsequent to passage of the Schifani Law. (Note: The bill did not protect Previti, allowing prosecutors to proceed with the sentencing phase against him. End Note) Berlusconi's lawyers could argue that the sentencing of Previti is prejudicial to the PM.

¶5. (SBU) Comment cont: In the run-up to Italy's EU Presidency (July-December 2003), we were told by contacts in the center-right coalition that the government would act to safeguard PM Berlusconi from prosecution during its six month term. The timing of the Constitutional Court's decision, given that it could have issued a ruling at any time over the

last few months, suggests that an implicit condominium was reached to ensure that the Presidency would not be tarnished by a guilty verdict against Berlusconi. Now, we expect the government to push for passage of a constitutional bill (which time pressures in June did not permit) that will provide similar protections as the Schifani Law and re-extend full immunity to all sitting parliamentarians. It could be a

race against time for the government to pass such a law, which will require several months at a minimum, before the Milan trial moves into the sentencing phase. As the technicalities of this complex affair shake out, and possible outcomes crystallize, we will report them septel. End Comment.

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